

Michael A. Harris

NAME  
**Calipatria S.P.; P.O. Box 5002;**  
 PRISON IDENTIFICATION/BOOKING NO.  
**Calipatria, CA 92233-5002**  
 ADDRESS OR PLACE OF CONFINEMENT

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

*fee due*  
 RECEIVED & RETURNED  
 CLERK, U.S. DISTRICT COURT

JUL - 2 2008

CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]* DEPUTY

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

Michael A. Harris

FULL NAME (Include name under which you were convicted)  
 Petitioner.

Larry A. Small Warden

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER

Respondent.

CASE NUMBER:

CV CV08-4381-RSWL(RC)  
 To be supplied by the Clerk of the United States District Court

AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS  
 BY A PERSON IN STATE CUSTODY**

28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION \_\_\_\_\_  
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT

(List by case number)

CV \_\_\_\_\_

CV \_\_\_\_\_

**INSTRUCTIONS - PLEASE READ CAREFULLY**

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

5. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.

When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California  
 United States Courthouse  
 ATTN: Intake/Docket Section  
 312 North Spring Street  
 Los Angeles, California 90012

LODGED CLERK, U.S. DISTRICT COURT	JUN 30 2008	RECEIVED CENTRAL DISTRICT OF CALIFORNIA BY
CV-69 (04/05)		

PLEASE COMPLETE THE FOLLOWING: (*Check appropriate number*)

This petition concerns:

1.  a conviction and/or sentence.
2.  prison discipline.
3.  a parole problem.
4.  other.

**PETITION**

## 1. Venue

- a. Place of detention Calipatria State Prison
- b. Place of conviction and sentence Superior Court of San Diego County

2. Conviction on which the petition is based (*a separate petition must be filed for each conviction being attacked*).

- a. Nature of offenses involved (*include all counts*): Nine counts of robbery and use of a firearm during the commission of the robberies.
- b. Penal or other code section or sections: §211; §12022.53(b)
- c. Case number: SCD182007
- d. Date of conviction: Nov. 22, 2004
- e. Date of sentence: Jan. 10, 2005
- f. Length of sentence on each count: Count 1: 3 years for §211 + 10 years for §12022.53(b); = 1 year for §211 & 3 years 4 months §12022.53(b) on counts 2-9.

g. Plea (*check one*):

Not guilty

Guilty

Nolo contendere

h. Kind of trial (*check one*):

Jury

Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction?  Yes  No

If so, give the following information for your appeal (*and attach a copy of the Court of Appeal decision if available*):

- a. Case number: D045867
- b. Grounds raised (*list each*):  
  - (1) Insufficient of the evidence

(2) Denial of Marsden motion denied effective assistance of counsel  
 (3)  
 (4)  
 (5)  
 (6)

c. Date of decision: March 29, 2006

d. Result conviction affirmed

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision?  Yes  No

If so give the following information (*and attach copies of the Petition for Review and the Supreme Court ruling if available*):

a. Case number: \_\_\_\_\_

b. Grounds raised (*list each*):

(1) Insufficient evidence  
 (2) Denial of Marsden motion denied effective assistance of counsel.  
 (3)  
 (4)  
 (5)  
 (6)

c. Date of decision: June 14, 2006

d. Result review denied

5. If you did not appeal: N/A

a. State your reasons \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. Did you seek permission to file a late appeal?  Yes  No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

Yes  No

If so, give the following information for each such petition (*use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available*):

a. (1) Name of court: \_\_\_\_\_  
 (2) Case number: \_\_\_\_\_  
 (3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_  
 (4) Grounds raised (*list each*):

(a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_  
 (d) \_\_\_\_\_  
 (e) \_\_\_\_\_  
 (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_  
 (6) Result \_\_\_\_\_

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(7) Was an evidentiary hearing held?       Yes     No

b. (1) Name of court: \_\_\_\_\_  
 (2) Case number: \_\_\_\_\_  
 (3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_  
 (4) Grounds raised (*list each*):

(a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_  
 (d) \_\_\_\_\_  
 (e) \_\_\_\_\_  
 (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_  
 (6) Result \_\_\_\_\_

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(7) Was an evidentiary hearing held?       Yes     No

c. (1) Name of court: \_\_\_\_\_  
 (2) Case number: \_\_\_\_\_  
 (3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_  
 (4) Grounds raised (*list each*):

(a) \_\_\_\_\_  
 (b) \_\_\_\_\_

(c) \_\_\_\_\_  
 (d) \_\_\_\_\_  
 (e) \_\_\_\_\_  
 (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

**CAUTION:** *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: Conviction based on insufficient evidence violated Due Process clause of 14th Amendment, U.S. Constitution.

(1) Supporting FACTS: The prosecution's case consist of: 3 masked non-descript blackmen armed with guns robbed Collin's Family Jewelry store on January 30 at 10:05 am. The assailants left in a stolen white buick. On February 1, at 9:00am, a stolen red jeep was found with a drawer divider from the store with petitioner's print.

(2) Did you raise this claim on direct appeal to the California Court of Appeal?  Yes  No  
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No  
 (4) Did you raise this claim in a habeas petition to the California Supreme Court?  Yes  No

b. Ground two: Failure to grant marsden motion denied right to effective assistance of counsel under 6th & 14th Amend., U.S. Constitution.

(1) Supporting FACTS: Petitioner's trial attorney ignored his request to investigate his alibi defense, therefore, he filed a marsden motion. The trial court denied the motion, accepting trial counsel's excuse for not investigating was because of a general disdain for alibi defense. Prejudice: The defense offered NO evidence at all.

(2) Did you raise this claim on direct appeal to the California Court of Appeal?  Yes  No  
 (3) Did you raise this claim in a Petition for Review to the California Supreme Court?  Yes  No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

Yes  No

If so, give the following information for each such petition (*use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available*):

a. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_

(4) Grounds raised (*list each*):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

b. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_

(4) Grounds raised (*list each*):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction?  Yes  No

If so, give the following information (*and attach a copy of the petition if available*):

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date filed (*or if mailed, the date the petition was turned over to the prison authorities for mailing*): \_\_\_\_\_
- (4) Grounds raised (*list each*):  
 (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_  
 (d) \_\_\_\_\_  
 (e) \_\_\_\_\_  
 (f) \_\_\_\_\_

11. Are you presently represented by counsel?  Yes  No

If so, provide name, address and telephone number:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

*Signature of Attorney (if any)*

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 6-15-08  
Date

  
*Michael Harris*  
*Signature of Petitioner*

Michael A. Harris*Petitioner*Larry A. Small, Warden*Respondent(s)*

**DECLARATION IN SUPPORT  
OF REQUEST  
TO PROCEED  
IN FORMA PAUPERIS**

I, Michael A. Harris, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed?  Yes  No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. \_\_\_\_\_

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. \_\_\_\_\_

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment?  Yes  No
- b. Rent payments, interest or dividends?  Yes  No
- c. Pensions, annuities or life insurance payments?  Yes  No
- d. Gifts or inheritances?  Yes  No
- e. Any other sources?  Yes  No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts)

Yes  No

If the answer is yes, state the total value of the items owned: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (Excluding ordinary household furnishings and clothing)  Yes  No

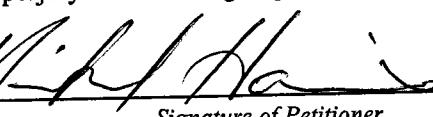
If the answer is yes, describe the property and state its approximate value: \_\_\_\_\_  
\_\_\_\_\_

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: \_\_\_\_\_  
\_\_\_\_\_

N/A

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on 6-15-08  
Date

X   
Signature of Petitioner

#### CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ \_\_\_\_\_ on account to his credit at the \_\_\_\_\_ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: \_\_\_\_\_

SEE NEXT PAGE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Officer of Institution/Title of Officer

If you are a prisoner you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

OFFICIAL PRISON CERTIFICATE  
(Incarcerated applicants only)  
(To be completed by the institution of incarceration)

I certify that the applicant

HAREN'S  
(NAME OF INMATE)

V 64465

(INMATE'S CDC NUMBER)

has the sum of \$ 0 on account to his/her credit at

CALIFORNIA STATE PRISON

(NAME OF INSTITUTION)

I further certify that the applicant has the following securities N/A

to his/her credit according to the records of the aforementioned institution. I further certify that during the past six months the applicant's average monthly balance was \$ 19.73 and the average monthly deposits to the applicant's account was \$ 17.50

6/13/08

DATE

Guadalupe V. Garcia  
SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

Guadalupe V. Garcia  
OFFICER'S FULL NAME (PRINTED)

Accounting Officer Supervisor  
OFFICER'S TITLE/RANK

REPORT ID: TS3030 .701 REPORT DATE: 06/13/08  
PAGE NO: 1CALIFORNIA DEPARTMENT OF CORRECTIONS  
CALIPATRIA STATE PRISON  
INMATE TRUST ACCOUNTING SYSTEM  
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: DEC. 01, 2007 THRU JUN. 13, 2008

ACCOUNT NUMBER : V64465 BED/CELL NUMBER : FB0100000000148U  
ACCOUNT NAME : HARRIS, MICHAEL ANTHONY  
PRIVILEGE GROUP : A ACCOUNT TYPE: I

## TRUST ACCOUNT ACTIVITY

TRAN	DATE	CODE	DESCRIPTION	COMMENT	CHECK NUM	DEPOSITS	WITHDRAWALS	BALANCE
	12/01/2007		BEGINNING BALANCE					0.00
			ACTIVITY FOR 2008					
03/03	D340	EFT DEPOSIT	90753/5000			40.00		40.00
03/10	W408	DONATION-RECR	B-BQ 5186			22.00		18.00
03/17	FC02	DRAW-FAC 2	B-1 5383			18.00		0.00
03/18	D340	EFT DEPOSIT	90769/5409			70.00		70.00
04/14	FC02	DRAW-FAC 2	B-1 6063				70.00	0.00
05/02	D340	EFT DEPOSIT	90814 6518			50.00		50.00
05/09	D340	EFT DEPOSIT	90821/6675			50.00		100.00
05/13	W452	DONATION-STR	PIZZA 6739					75.50
05/19	FC02	DRAW-FAC 2	B-1 6908			75.50		0.00

## TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HALDS BALANCE	TRANSACTIONS TO BE POSTED
0.00	210.00	210.00	0.00	0.00	0.00

THE WITHIN INSTRUMENT IS A CORRECT  
COPY OF THE TRUST ACCOUNT MAINTAINED  
BY THIS OFFICE.  
ATTEST:  
CALIFORNIA DEPARTMENT OF CORRECTIONS  
BY *[Signature]*  
TRUST OFFICE





SHERRI R. CARTER

District Court Executive  
and Clerk of Court

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**  
 312 North Spring Street, Room G-8 Los Angeles, CA 90012  
 Tel: (213) 894-7984

**SOUTHERN DIVISION**  
 411 West Fourth Street, Suite 1053  
 Santa Ana, CA 92701-4516  
 (714) 338-4570

**EASTERN DIVISION**  
 3470 Twelfth Street, Room 134  
 Riverside, CA 92501  
 (951) 328-4450

Wednesday, July 02, 2008

MICHAEL A. HARRIS V-64465  
 CALIPATRIA STATE PRISON YARD B, BLD 1, CELL  
 148  
 P.O. BOX 5005  
 CALIPATRIA, CA. 92233-5005

Dear Sir/Madam:

A  Petition for Writ of Habeas Corpus was filed today on your behalf and assigned civil case number  
 CV08- 4381 RSWL (RC)

A  Motion pursuant to Title 28, United States Code, Section 2255, was filed today in criminal case number  
 and also assigned the civil case number

Please refer to these case numbers in all future communications.

Please Address all correspondence to the attention of the Courtroom Deputy for:

District Court Judge \_\_\_\_\_

Magistrate Judge Rosalyn M. Chapman

at the following address:

U.S. District Court  
 312 N. Spring Street  
 Civil Section, Room G-8  
 Los Angeles, CA 90012

Ronald Reagan Federal  
 Building and U.S. Courthouse  
 411 West Fourth St., Suite 1053  
 Santa Ana, CA 92701-4516  
 (714) 338-4750

U.S. District Court  
 3470 Twelfth Street  
 Room 134  
 Riverside, CA 92501

The Court must be notified within fifteen (15) days of any address change. If mail directed to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the case with or without prejudice for want of prosecution.

Very truly yours,

Clerk, U.S. District Court

AGIGLIOT  
 By: \_\_\_\_\_  
 Deputy Clerk